IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

WP(C).No. 19732 of 2007(Y)

PETITIONER:

VIKRAMAN PILLAI, TAKIL,
VISHNATHUKAVU DEVASWOM, KOLLAM GROUP,
KOLLAM.

BY ADV. SRI.B.MOHANLAL.

RESPONDENTS:
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1. **THE TRAVANCORE DEVASWOM BOARD,**
   REPRESENTED BY ITS SECRETARY, NANDANCODE,
   THIRUVANANTHAPURAM.

2. **THE COMMISSIONER, TRAVANCORE**
   DEVASWOM BOARD, NANDANCODE,
   THIRUVANANTHAPURAM.

3. **THE INSPECTION DEPUTY DEVASWOM**
   COMMISSIONER, TRAVANCORE DEVASWOM BOARD,
   THIRUVANANTHAPURAM.

4. **THE ASSISTANT DEVASWOM COMMISSIONER,**
   TRAVANCORE DEVASWOM BOARD, KOLLAM.

5. **THE SUB GROUP OFFICER,**
   THIRUMULLAVARAM DEVASWOM,
   THIRUMULLAVARAM P.O., KOLLAM.

BY GOVT. PLEADER SRI. BIJOY CHANDRAN.
ADV. SRI. D. SREEKUMAR, SC, T.D.B.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. BALAKRISHNAN NAIR, J.

W.P.(C) No.19732 & 19784 of 2007

Dated this the 27th June, 2007.

JUDGMENT

W.P.(C)No.19732 of 2007

The petitioner in this writ petition is a player of 'Thakil', attached to Vishnathukavu temple, Kollam, administered by the Travancore Devaswom Board. He challenges the order transferring him from the said temple, to Neyyattinkara Sub Group. He was on leave on 16.9.2006, and also from the forenoon of 17.9.2006 to 18.9.2006 Afternoon. While so, on 18.9.2006, the petitioner was served with Ext.P2 notice, stating that on the evening of 17.9.2006, he, along with the petitioner in the connected writ petition, came to the temple under intoxication, after consuming liquor, and created a scene there. The local people and the devotees gathered around. Even though the Sub Group Officer requested them to go away, they continued to remain there. The said conduct of the petitioner and his colleague amounted to gross misconduct. Therefore, they were called upon to show cause, why action should not be taken against them. The petitioner submitted

Ext.P3 reply, denying the allegations. Later, the Assistant Devaswom Commissioner, apparently on the report of the Sub Group Officer, issued Ext.P4 show cause notice, containing more or less the same allegations. The petitioner submitted his reply, Ext.P5. He denied all the allegations. According to him, the Sub Group Officer has been harbouring ill will towards him and his colleague, for the reason that they failed to join his union. The Assistant Devaswom Commissioner forwarded the file to the Deveswom Commissioner. The said officer caused a further enquiry into the matter through the Inspection Deputy Devaswom Commissioner. Based on his report and other materials before him, the Devaswom Commissioner passed Ext.P6 order, directing to transfer the petitioner and his friend to Neyyattinkara Sub Group. The petitioner approached this Court, challenging the said order, by filing W.P.(C)No.13738 of f2007. The said writ petition was disposed of directing the Principal Secretary and Special Commissioner, Travancore Devaswom Board, who was, at that time, exercising the powers of the Devaswom Board, to consider his appeal, which was produced as Ext.P7 in that writ petition. The Devaswom

Board, later, passed Ext.P8 proceedings, affirming Ext.P6. Hence this writ petition, challenging Exts.P6 and P8.

The petitioner submits that the allegations against him are unfounded. Because of union rivalry, the Sub Group Officer has cooked up the allegations against him. This Court directed the Special Commissioner, Travancore Devaswom Board, to consider the matter. But, it was considered by the Devaswom Board. Going by the order of the Board, it would appear that there is total non-application of mind. Relevant materials, like the attendance register, etc., were not taken into account by the Devaswom Board. So, Ext.P8 is vitiated, it is submitted.

W.P.(C) No.19784 of 2007

The petitioner is the colleague of the writ petitioner in W.P.(C) 19632 of 2007. He is a 'Nadaswaram' player. The facts of both these cases are identical. The petitioner herein also alleges mala fides on the part of the Sub Group Officer. He also attack the impugned orders on the ground that they are passed

without adverting to the correct facts and without application of mind.

The technical objection taken by the petitioners that the direction of this Court was to the Special Commissioner, Travancore Devaswom Board, but the decision was taken by the Board, cannot be accepted. The Principal Secretary and Special Commissioner was exercising the powers of the Devaswom Board at the time when the direction was issued by this Court. But, by the time the appeal came up for consideration, the Devaswom Board, which was competent to deal with the appeal, was reconstituted and, therefore, the Board exercised the appellate power.

The petitioners allege union rivalry only against the Sub Group Officer and the Assistant Devaswom Commissioner, who conducted an enquiry and forwarded the report to the Devaswom Commissioner. The Devaswom Commissioner also passed the order only after getting a report from a third officer, the Inspection Deputy Devaswom Commissioner. Against the said officer or the Devaswom Commissioner there is no allegation of mala fides. Essentially, the grounds urged by the petitioners

fall within the realm of disputed question of facts. I find no reason why the Deputy Devaswom Commissioner, who enquired into the matter, should falsely implicate the petitioners and harm them. The Commissioner acted on the materials before him. The action taken against the petitioners is only a transfer, for which all these exercises were unnecessary. But, in this case, the petitioners have been given a fair opportunity to present their case. After considering the case put forward by them and also after conducting further enquiry into the matter, action was taken and still the petitioners were demurring. I feel that their objection is patently untenable. The contentions raised by the petitioners against their transfer are plainly and manifestly untenable.

These writ petitions, therefore, fail and are dismissed.

K. BALAKRISHNAN NAIR,
JUDGE.

vav.